

FILED

AUG 25 1997

SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE PETITION)
FILED BY THE DIVISION OF OIL, GAS)
AND MINING FOR AN ORDER)
REQUIRING IMMEDIATE)
RECLAMATION OF THE DRUM MINE,)
FROM WESTERN STATES MINERALS)
CORPORATION AND JUMBO MINING)
COMPANY, MILLARD COUNTY, UTAH)
)
)
)

RESPONSE OF WESTERN STATES
MINERALS CORPORATION

Docket No. 97-009
Cause No. M/027/007

COMES NOW Western States Minerals Corporation, Respondent in the
above-captioned petition (hereinafter "WSMC"), and offers its response.

JURISDICTION

1. WSMC avers that the statute cited as authority under which the
Division of Oil, Gas and Mining (hereinafter, the "Division" or "DOGM") brings this
action, Utah Code Annotated § 40-8-7 (1953) as amended) speaks for itself, and this
allegation therefore, requires no response.
2. WSMC avers that this allegation cites as authority a statute that
speaks for itself and, therefore, requires no response.
3. WSMC avers that the provisions of Section 63-46b-6 through 11 of
the Utah Code Annotated (1953 as amended) speak for themselves and, therefore
requires no response.

4. WSMC avers that this allegation purports to be a restatement of the provisions of R641-104-151.100, which speaks for itself and, therefore, requires no response.

5. WSMC avers that this paragraph does not contain an allegation and, therefore, requires no response.

WSMC'S RESPONSE TO THE DIVISION'S STATEMENT OF THE CASE

WSMC admits the allegation of the first and second sentences of this paragraph. WSMC admits that it received permit approval for the Drum Mine, but avers that the correct date of approval was November 28, 1983. WSMC denies that part of the next two sentences which alleges that WSMC retaining reclamation responsibility for 42 acres of the Drum Mine; if WSMC had such responsibility, it satisfied the conditions the Division imposed for releasing it. WSMC avers that the next sentence speaks for itself and requires no answer. WSMC avers that the next sentence is a disputed statement of fact, the resolution of which may affect WSMC's interests; WSMC has no right of possession or access to the Drum Mine, and has had none since October 12, 1988, lacks sufficient information to form a belief as to the truth of the allegation contained therein and, therefore, denies same. WSMC denies the allegations of the next sentence insofar as they imply that WSMC has reclamation responsibility at the Drum Mine. The final sentence in this paragraph states the Division's prayer for relief; WSMC avers in response that the Division is not entitled to relief, and their prayer should be denied as to WSMC.

WSMC'S RESPONSE TO THE DIVISION'S STATEMENT OF FACTS

6. WSMC admits the allegation of Paragraph 6.
7. WSMC admits the allegation of Paragraph 7.
8. WSMC admits the allegations of Paragraph 8.
9. WSMC denies the allegation of Paragraphs 9, and states that the permit transfer with conditions was made by DOGM, at the insistence of Jumbo. WSMC avers that it has met the conditions subsequently imposed by the Division on the transfer of the permit to Jumbo, and denies that it has responsibility for reclamation of 42 acres of the Drum Mine.
10. WSMC lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 10 and, therefore, denies same.
11. WSMC lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 11 and, therefore, denies same.
12. WSMC is aware that the Division sent a letter to Jumbo on August 1, 1996, and avers that the contents speak for themselves.
13. WSMC admits that it met with Division staff on August 6, 1996. WSMC admits that the Division delivered a letter to WSMC personnel. WSMC denies that such letter constituted an adequate explanation for the Division's action attempting to increase WSMC's surety estimate. WSMC avers instead that the Division's attempt to increase its surety is without adequate justification, is in violation of R647-4-113-6, and is an abuse of the Division's authority.

14. WSMC is aware that Jumbo sent a letter to the Division on August 6, 1996, and avers that the contents speak for themselves.

15. WSMC admits having received a certified letter sent by the Division on August 9, 1996. WSMC admits that it received a certified letter sent by the Division on August 17, 1996. WSCM avers that the contents of the letters speak for themselves.

16. WSMC lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 16 and, therefore, denies same.

17. WSMC admits the allegations of Paragraph 17.

18. WSMC lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 18 and, therefore, denies same. WSMC avers that if such a fax was sent, the contents speak for themselves.

19. WSMC lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 19 and, therefore, denies same. WSMC avers that any proceeding which alleges that it has reclamation responsibility for the Drum Mine will result in substantial prejudice to its interests.

20. WSMC lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 20 and, therefore, denies same.

21. WSMC lacks sufficient information to form a belief as to the truth of the allegations in Paragraph 21 and, therefore, denies same.

22. WSMC avers that Paragraph 22 speaks for itself, and needs no response.

23. WSMC denies that it is an operator of record at the Drum Mine, and denies that it is in noncompliance with § 40-8-16(2)(c) and Rule R647-4-117.4. WSMC avers that the second sentence of this paragraph states a legal conclusion interpreting the authority granted by the above-mentioned statutory and regulatory provisions. WSMC avers that those provisions speak for themselves and, therefore, the second sentence of this paragraph needs no reply.

. WSMC'S AFFIRMATIVE DEFENSES

A. WSMC avers that the Division's "Petition for an Order Requiring Immediate Reclamation of the Drum Mine" fails to state a claim on which relief can be granted and, therefore, should be denied.

B. WSMC avers that the Division is barred from seeking the order it requests by the doctrines of estoppel, laches, and waiver.

WSMC'S STATEMENT OF FACTS

WSMC realleges and incorporates by reference the foregoing responses and allegations and further affirmatively alleges as follows:

1. WSMC conveyed all of its right, title and interest in the Drum Mine to Jumbo Mining Company in 1988.
2. DOGM made the full final transfer of the Drum Mine reclamation permit to Jumbo, and the return of WSMC's surety, dependent on two conditions subsequent: that WSMC and Jumbo resolve the issue of which entity is responsible for reclamation under the contract of sale, and that WSMC, Jumbo, or both of them,

demonstrate the existence of an adequate supply of topsoil for reclamation. See Exhibit A.

3. WSMC received a judgment, domesticated in Utah, that fixed reclamation responsibility on Jumbo. See Exhibit B. That decision, which has been appealed and was affirmed by Colorado's intermediate Court of Appeals, has not been stayed, and is in full force and effect. Although Jumbo has sought certiorari from the Colorado Supreme Court, the decision remains in full force and effect pending the Supreme Court's decision on whether or not to review Jumbo's petition.

4. The Division has approved a source of topsoil, see Exhibit C, and, therefore, both conditions set forth in Exhibit A have been satisfied, and WSMC is entitled to a release from further reclamation responsibility, and the return of its surety.

PRAYER FOR RELIEF

WHEREFORE, WSMC requests that the Board enter the following order:

A. Dismiss the Notice of Agency Action requested by the Division, to the extent that action is directed at WSMC.

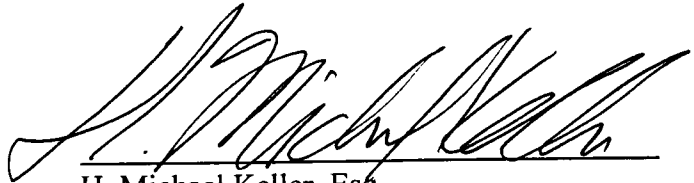
B. Issue a declaration that Jumbo Mining Company is the sole operator of the Drum Mine, as defined in Utah Rev. Stat. § 40-8-4(12), and as the operator is solely responsible for all reclamation at the site and compliance with all applicable statutes and regulations, in particular, R647-4-120.

C. Issue an Order requiring the Division forthwith to assess the correct amount of reclamation surety and levy such amount against Jumbo Mining

Company as a condition of the renewal or grant of any additional permits to Jumbo Mining Company.

D. Issue an Order requiring the Division to return to WSMC the full amount of its surety, as required by Utah Rev. Stat. §§ 40-8-19 and 40-8-14(5) and R647-4-113.

DATED this 25th day of August, 1997.

A handwritten signature in black ink, appearing to read "H. Michael Keller", written over a horizontal line.

H. Michael Keller, Esq.
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street, Suite 1600
P.O. Box 45340
Salt Lake City, UT 84145

Stephen D. Alfors, Esq.
Christopher G. Hayes, Esq.
Alfers & Carver
730 17th Street, Suite 340
Denver, CO 80202

Attorneys for Western States Minerals
Corporation

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the within and foregoing RESPONSE OF WESTERN STATES MINERALS CORPORATION this 25th day of August, 1997, to the following:

Thomas A. Mitchell, Esq.
Assistant Attorney General, State of Utah
Attorney for the Division of Oil, Gas & Mining
160 East 300 South, Sixth Floor
P.O. Box 140857
Salt Lake City, UT 84114-0857

Daniel G. Moquin, Esq.
Division of Oil, Gas and Mining
1594 West North Temple, Suite 300
P.O. Box 140855
Salt Lake City, UT 84114-0855

Z. Lance Samay, Esq.
Attorney for Jumbo Mining Company
1 Washington Street
P.O. Box 130
Morristown, NJ 07963

Lawrence J. Jensen, Esq.
Holland & Hart LLP
215 South State Street, Suite 500
Salt Lake City, Utah 84111

A handwritten signature in black ink, appearing to read "H. Michael Voth", is written over a horizontal line.



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FORM MR-TRL
(Revised 3/89)

For Division Use:
File No.: _____
Effective Date: _____
DOGM Lead: _____

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
(801) 538-5340

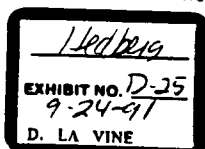
RECEIVED
JUL 11 1989

TRANSFER OF NOTICE OF INTENTION
LARGE MINING OPERATIONS

DIVISION OF
OIL, GAS & MINING

---0000---

1. (a) Notice of intention to be transferred (file number): M/027/007
(b) Name of mining operation: Drum Mine
(c) Location of mining operation (county): Millard, Utah
(d) Name, telephone number and mailing address of the operator currently holding the notice of intention (transferor):
Western States Minerals Corporation
4975 Van Gordon Street
Wheatridge, Colorado 80033
2. (a) Name, telephone number and mailing address of the operator acquiring the notice of intention (transferee):
Jumbo Mining Company
6305 Fern Spring Cove
Austin, Texas 78730 512- 346-4537
(b) Name, telephone number and address of the authorized representatives of the Transferee to whom any notices under the provisions of the Utah Mined Land Reclamation Act may be sent:
Same as above Mr. E.B. King
3. (a) The total disturbed area identified in the approved notice of intention: 143.7 acres original; 126 revised acres
(b) The actual number of acres disturbed by the operation through date of transfer: 126 acres
(c) Attach a legal description of above acreages as Appendix "A" and a map of suitable scale with actual disturbed areas clearly shown and identified.
E0000553
4. This application must be accompanied by a fully executed and signed Reclamation Contract (Form MR-RC).



SWORN STATEMENT OF TRANSFEROR

I, ALLAN R. CERNY being first duly sworn under oath, deposes and says that I am SECRETARY
(officer or agent)
of WESTERN STATES MINERALS CORPORATION; and that I am duly authorized to
(Corporation/Company Name)
execute and deliver the foregoing obligations; that I have read the said application and fully know the contents thereof; that all statements contained in the transfer application are true and correct to the best of my knowledge and belief based upon the attached map and calculations forwarded to me by E. B. King of Jumbo Mining Company. By execution of this statement I certify that the Transferor is in full compliance with the Utah Mined Land Reclamation Act, the Rules and Regulations Promulgated thereunder, and the terms and conditions of Notice of Intention No. M/027/007.

Western States Minerals Corporation hereby makes no representation in regard to the allocation of responsibility for reclamation as between Western States Minerals Corporation and Jumbo Mining Company.

Allan R. Cerny
Signature
ALLAN R. CERNY
Name (Typed or Print)
SECRETARY - WSMC
Title

Subscribed and sworn before me this 12 day of July, 1989.

John R. Riffe
Notary Public

My commission expires:
August 2, 1991.

State of Colorado)
County of Jefferson) ss.

E0000554

FINAL SWORN STATEMENT OF TRANSFEREE

E.B. King being first duly sworn under oath,
depone and say that I am President
(officer or agent)
of Jumbo Mining Company; and that I am duly authorized to
(Corporation/Company Name)

execute and deliver the foregoing obligations; that I have read the
application and fully understand the contents thereof; that all statements
contained in the transfer application are true and correct to the best of my
knowledge and belief. By execution of this statement, the Transferee agrees
to be bound by the terms and conditions of Notice of Intention
No. M/027/007, the Utah Mined Land Reclamation Act, and the Rules and
Regulations promulgated thereunder. **Except for those issues
of which the Division, the Dept. of Health and Transfer are on notice.*

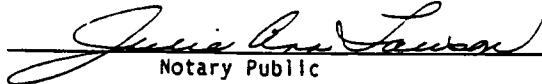


Signature

Name (Typed or Print) E.B. King

Title President

Subscribed and sworn before me this 10 day of July, 19 89.


Notary Public

My commission Expires:

February 10, 19 90.

State of Idaho)

County of Salt Lake) ss.

E0000585

CERTIFICATION OF APPROVAL

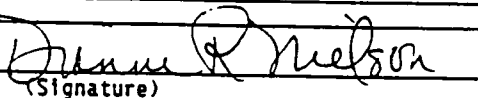
This is to certify that I have examined the foregoing application and do hereby grant the same, subject to the following limitations and conditions:

- (a) This transfer of notice of intention grants only the right to affect the lands described in Appendix "A".
- (b) The transferee has provided to the Division a fully executed and signed Reclamation Contract (Form MR-RC). The surety shall be effective on the date of transfer.
- (c) The transferee, or such other person as required by UCA 1953, Title 40-8, has acquired legal right to mine for lands described in Appendix "A".

COMMENTS:

Additional Conditions of Transfer - See Attachment 1

APPROVED:


(Signature)

Director, Division of Oil, Gas and Mining

Effective Date:
NOI No.:

8/4/89
M/027/007

APPROVED AS TO FORM:


(Signature)
Assistant Attorney General

ATTACHMENT 1

**Transfer of Notice of Intention No. M/027/007
Certification of Approval
Conditions of Transfer**

July 25, 1989

Conditions of Transfer (continued)

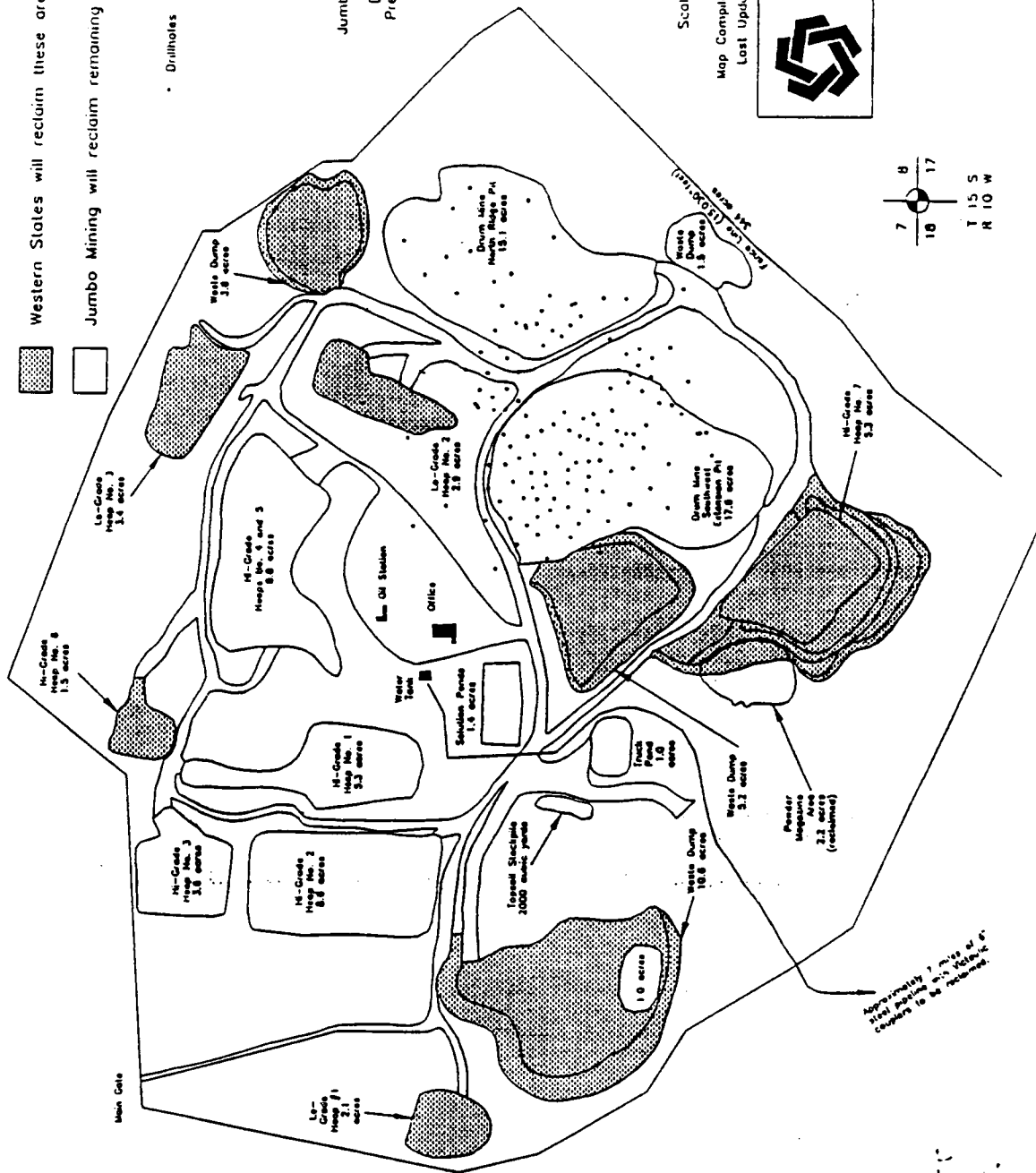
- (d) The Division will continue to hold the Transferor responsible for the reclamation of approximately 42 acres of existing Drum Mine surface disturbance, as delineated in Appendix A.
- (e) The Division will hold the Transferee responsible for the reclamation of approximately 84 acres of existing Drum Mine surface disturbance, as delineated in Appendix A.
- (f) The Transferor will retain responsibility for resolving the topsoil deficiency issue.
- (g) The Transferee's 84 acre Drum Mine reclamation responsibility includes posting a reclamation surety of \$143,000, based on reclamation calculations from Appendix A information.
- (h) An additional 11 acres of surface disturbance will be approved as an amendment to the Drum Mine permit. The Transferee will provide an additional \$19,000 reclamation surety amount for the proposed amendment (Drum Mountain Project).
- (i) The Division will retain possession of the Transferor's \$264,080 reclamation surety bond, until the topsoil deficiency issue and the question of ultimate Drum Mine reclamation responsibility between the Transferor and Transferee is resolved.
- (j) Resolution of the reclamation responsibility question may ultimately require an additional adjustment to the Transferee's reclamation surety amount.

jb
MN3/52

E0000557

APPENDIX "A"

Western States will reclaim these areas (418 acres)
Jumbo Mining will reclaim remaining areas (839 acres)



E0000585

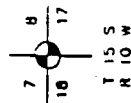
Jumbo Mining Company
M/02/00/7
Drum Mine Site
Present Disturbance

Scale: 1" = 600'

Map Compiled December 5,
Last Update July 26, 1991



State of Utah
Department of Natural Resources
Division of Oil, Gas and Mining



Approximately 1 mile of
road passing over historic
countryside to be reclaimed



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EXHIBIT B



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor

Ted Stewart
Executive Director

James W. Carlier
Division Director

635 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-538-3949 (Fax)
801-538-3315 (TDD)

July 10, 1995

CERTIFIED RETURN RECEIPT
P 074 978 934

E. B. King
Jumbo Mining Company
6305 Fern Spring Cove
Austin, Texas 78730

Re: Topsoiling Deficiency Resolution & Interim Reclamation Surety, Jumbo Mining Company, Drum Mine, M/027/007, Millard County, Utah

Dear Mr. King:

Please accept our apology for the unforeseen delay in providing a more timely response to your recent topsoil replacement proposal. On March 9, 1995, Division and BLM staff met with Mr. Dave Hartshorn of Jumbo Mining Company (JMC) to perform a joint site inspection of the Drum Mine site. The inspection was conducted to evaluate several proposed topsoil borrow areas that JMC has identified to resolve the outstanding topsoil permitting deficiency.

During our inspection of the proposed borrow areas, it became evident that a sufficient volume of substitute topsoil material is available to make up the permitting deficiency. Mr. Hartshorn indicated he did not determine whether more than the required 55,000 cu. yd. volume of topsoil material was available. He agreed there is probably more topsoil material available from the borrow sites than what is presently required. Because it is unclear whether the existing heaps and associated disturbed areas were actually constructed as originally designed and approved under Western States Minerals Company's (WSMC) permit, it is possible that additional topsoil material may ultimately be needed to successfully reclaim the mine site disturbances. Accordingly, the Division encourages JMC to consider stockpiling additional topsoil material to assist in their final reclamation efforts. The Division and BLM jointly support the use of the proposed topsoil borrow areas for JMC's use in making up the topsoil deficiency.

As a condition to our approval of the topsoil borrow areas, the Division will require JMC to clearly mark/identify the borrow areas on the ground such that there will be little

Page 2
E. B. King
M/027/007
July 10, 1995

chance that the borrow areas will be adversely impacted during the continued period of suspended operations. Before beginning mining and processing operations that could potentially impact the borrow areas, the substitute topsoil material must be stripped and stockpiled.

An updated surface facilities map must be provided identifying where the salvaged topsoil material will be placed. The map should be labelled with the approximate volume of topsoil in each stockpile. Upon final reclamation of the mine site, all stockpiled topsoil material must be analyzed for the following constituents to determine basic soil fertility and the need for soil amendments: Texture, % Organic matter, pH, Nitrogen, Phosphorus, and Potassium. The results of the analytical tests will determine which soil amendments may be required to enhance the soil fertility and revegetative success.

The Division agreed to provide Jumbo Mining Company with a written assessment of our findings following our onsite inspection. We have also evaluated your draft reclamation cost estimate for stripping and stockpiling this borrow/topsoil material. A preliminary *interim* reclamation surety estimate has been prepared (see attachment). This estimate is based upon an escalation of the original approved WSMC surety estimate and JMC's subsequent supplemental permitting amendments to the Drum Mine permit.

The original WSMC estimate has been escalated from 1984 through 1994 using actual Means Historic Cost Indices. Escalation adjustments have also been made to JMC's 1989 reclamation estimates, which involve other areas that were permitted or proposed to be included under the existing Drum Mine permit. A five year future escalation of the calculated 1995 interim surety amount totals \$425,200 (year 2000 dollars). *The Division and BLM reserve the right to increase or decrease this interim surety amount as pertinent circumstances, permitting conditions and/or mine plan modifications require requisite surety adjustments.*

In a March 23, 1992 response letter, JMC agreed to a stipulation/condition contained in DOGM's January 14, 1992 - 2nd technical review of the Mizpah Pit and New Heap permit amendments. The condition required JMC to provide an updated, reformatted and consolidated mining and reclamation plan/permit application. This updated plan would include all previous and subsequently approved Drum Mine permit revisions and amendments, within 6 months following DOGM's approval of the New Heap and Mizpah Pit permit amendments. On August 3, 1992, DOGM issued a conditional tentative approval for both amendments. To date, we have not received a sufficient response from JMC which would enable us to issue our final approval of these amendments. Therefore, these amendments remain unapproved.

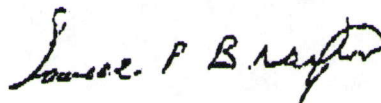
Page 3
E. B. King
M/027/007
July 10, 1995

Enclosed is a new permit transfer form that will need to be signed by JMC and Western States Minerals Company (WSMC), notarized and returned to the Division. The new form will affectively transfer all of the remaining permitting and reclamation responsibilities for the entire Drum Mine property from WSMC to JMC. The transfer form cannot be approved by the Division until a replacement surety is approved by the Board of Oil, Gas and Mining.

A new Reclamation Contract (FORM MR-RC) will need to be completed and returned along with the new surety. A copy of this form is enclosed. Please let us know what form of surety you wish to post, so that the appropriate surety forms can be sent to you. Because of the federal lands involved, the reclamation surety will need to be made jointly payable to Utah Department of Natural Resources, DOGM and the U.S. Department of the Interior, BLM.

Thank you for your patience and cooperation in completing this permitting action. Please contact me or D. Wayne Hedberg of the Minerals staff if you have questions or concerns in this regard.

Sincerely,



Lowell P. Braxton
Associate Director, Mining

jd
Attachment: reclamation surety estimate
Enclosures: FORM MR-TRL, FORM MR-RC & Guideline
pc (w/attachment):
Rody Cox, BLM, Warm Spring RA
Lee Foreman, WSMC counsel
David Hartshorn, Jumbo - Drum Mine
Don Oster, DWQ
M027007.tps

RECLAMATION ESTIMATE Jumbo Mining Company DRAFT

Drum Mine [entire site]

last revision

page "COUSO"

M/027/007

Millard County

filename DRUMS.WC2

Prepared by Utah State Division of Oil, Gas & Mining

Details of Final Reclamation

- This mine site was previously split into two permits with separate reclamation sureties
- Western States Minerals Co. had a bond covering 42 acres in the amount of \$264,080
- Jumbo had a separate bond covering 84 + 11 acres in the amount of \$162,000
- Western States' entire bond was retained until a topsoil deficiency could be resolved
- A Colorado Court ruling required Jumbo to assume responsibility for the entire site
- This estimate adjusts all previous DOGM estimates to be in current dollars and then escalates the current subtotal for five years into the future
- This estimate includes recent topsoil survey information as resolving the topsoil deficiency
- This estimate does not include the proposed amendment of Heap 2LG & 7 into Jumbo's plan
- WSMC'S portion of Drum Mine-LG1/LG2/LG3/HG6/HG7/WASTE 10.6/WASTE 3.6/WASTE 5.2
- This estimate ASSUMES WSMC's site responsibility is corrected in the DOGM May 22, 1989 estimate
- DOGM has adjusted the May 22, 1989 estimate to account for 55,000 CY of topsoil replacement

-Jumbo portion of Drum Mine-HG1/HG2/HG3/HG4&5/NORTH RIDGE PIT/SOUTHERN EXTENSION PIT/
WASTE DUMP 1.5/POWDER MAGAZINE/TRUCK POND/TOPSOIL STOCKPILE/SOLUTION PONDS;
OFFICE/OIL STATION/WATER TANK: \$130,230 1989-\$

-Jumbo - Alto/Keystone/Monarch/box: \$16,290 1988-\$

-Jumbo-Mizpah Pit: \$33,358 1992-\$; AND New Heap \$50,401 1992-\$ == > \$83,759 1992-\$

-Escalation factors through 1994 are actual Means Historical Cost Indices

WSMC'S PORTION OF ORIGINAL ENTIRE SITE

DOGM ADJUSTED EST. \$96,329

-Total disturbed area =
CALCULATIONS

$$F = P(1 + i)^{n}$$

F = Future Sum

P = Present Sum

i = Escalation Factor

n = number of periods

Three Yr Average = 2.68%

Used to Project 5 Yrs

into the Future

From the Year 1995

YR	ESCAL FACTOR	42.00 ACRES BOND AMOUNT
1985	0.0290	\$0
1986	0.0210	\$0
1987	0.0195	\$0
1988	0.0181	\$0
1989	0.0177	\$96,329
1990	0.0077	\$97,071
1991	0.0127	\$98,304
1992	0.0221	\$100,476
1993	0.0261	\$103,098
1994	0.0321	\$106,408
1995	0.0268	\$109,260
1996	0.0268	\$112,188
1997	0.0268	\$115,194
1998	0.0268	\$118,282
1999	0.0268	\$121,452
2000	0.0268	\$124,707

Updated Surety Amount Rounded (2000 \$)

Average cost per acre =

2,969 (\$/ACRE)

\$124,700

JUMBO'S PORTION OF ENTIRE SITE

1989-\$ \$130,230

-Total disturbed area =
CALCULATIONS

YR	ESCAL FACTOR	83.90 ACRES BOND AMOUNT
1985	0.0290	\$0
1986	0.0210	\$0
1987	0.0195	\$0
1988	0.0181	\$0
1989	0.0177	\$130,230
1990	0.0377	\$131,233
1991	0.0127	\$132,899
1992	0.0221	\$135,837
1993	0.0261	\$139,382
1994	0.0321	\$143,856
1995	0.0268	\$147,711
1996	0.0268	\$151,670
1997	0.0268	\$155,735
1998	0.0268	\$159,908
1999	0.0268	\$164,194
2000	0.0268	\$168,594

Updated Surety Amount Rounded (\$169,500
Average cost per acre = 2,010 (\$/ACRE)

JUMBO-ALTO/KEYSTONE/MONARCH/IBEX

1988-\$ \$16,290

-Total disturbed area =
CALCULATIONS

$$F = P(1 + i)^{*n}$$

F = Future Sum

P = Present Sum

i = Escalation Factor

n = number of periods

Three Yr Average = 2.68%

Used to Project 5 Yrs

Into the Future

From the Year 1995

YR	11.00 ACRES	
	ESCAL	BOND
	FACTOR	AMOUNT
1988	0.0181	\$16,290
1989	0.0177	\$16,578
1990	0.0077	\$16,706
1991	0.0127	\$16,918
1992	0.0221	\$17,292
1993	0.0261	\$17,743
1994	0.0321	\$18,313
1995	0.0268	\$18,804
1996	0.0268	\$19,308
1997	0.0268	\$19,825
1998	0.0268	\$20,356
1999	0.0268	\$20,902
2000	0.0268	\$21,462

Updated Surety Amount Rounded (2000 \$)

Average cost per acre =

\$21,500

1.955 (\$/ACRE)

COMBINED TOTAL IN 2000-\$ IS

\$425,200

JUMBO-MIZPAH PIT & NEW HEAP

1982-\$ \$83,759

-Total disturbed area =
CALCULATIONS

YR	36.40 ACRES	
	ESCAL	BOND
	FACTOR	AMOUNT
1988	0.0181	\$83,759
1989	0.0177	\$85,242
1990	0.0077	\$85,898
1991	0.0127	\$86,989
1992	0.0221	\$88,911
1993	0.0261	\$91,232
1994	0.0321	\$94,160
1995	0.0268	\$96,684
1996	0.0268	\$99,275
1997	0.0268	\$101,936
1998	0.0268	\$104,667
1999	0.0268	\$107,473
2000	0.0268	\$110,353

Updated Surety Amount Rounded (

Average cost per acre =

\$110,400

3.033 (\$/ACRE)



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EXHIBIT C

APR 25 1995

By Altu [Signature]
SALINE COUNTY Deputy Clerk

FILED IN THE
DISTRICT COURT

MAY 16 1994

DISTRICT COURT, COUNTY OF JEFFERSON, STATE OF COLORADO

Case No. 90-CV-3966, Division 9

JUDGEMENT

JEFFERSON COUNTY,
COLORADO

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT ON ALL
REMAINING NON-REFORMATION ISSUES

WESTERN STATES MINERALS CORPORATION,
a Utah corporation,

Plaintiff,

v.

ASOMA (UTAH), INC., a Delaware
corporation, JUMBO MINING CO., an
unincorporated association,
ED B. KING, a/k/a E.B. KING, and
JANET KING,

Defendants.

956912382
4-25-95
3:12 pm

The parties have agreed and the Court has ordered that all evidence at the preliminary injunction hearing heard March 31, 1991, and all evidence admitted at the Phase One trial as reflected in the transcript of the Phase One trial which was heard in May, 1992, as well as evidence heard in this Phase Two proceeding beginning May 2, 1994, shall be considered as part of the evidence for this Court's ruling on all remaining issues.

Plaintiff, Western States Minerals Corporation ("Western"), sold a gold mining operation in Utah to Defendants ASOMA and Jumbo. At all pertinent times Defendant Edwin B. King was acting for ASOMA and Jumbo. On October 8, 1992, this Court entered Findings of Fact, Conclusions of Law and Orders reforming the contract for the

learned that there was a shortage of stockpiled topsoil which would be needed to reclaim the mine site when the mining operation was finished. Defendants agreed to do complete reclamation, specifically including the taking care of unpermitted heaps and the topsoil problem.

The evidence established that reclamation requires the posting of a bond with the state of Utah. The parties contemplated that reclamation, as the term is used in this contract, included putting up a reclamation bond. Mr. King knew that the state of Utah required it, the parties discussed the reclamation matter, and Mr. King conceded during the due diligence period in his conversations with Mr. Cerny that he was obliged to post a bond but was having difficulty in obtaining one. While the contract does not require Defendants to post bond before closing, the evidence establishes that the posting of a bond is a requirement of reclamation. Because the parties intended and the Defendants agreed that Defendants would assume all reclamation, the contract therefore requires the Defendants to assume all reclamation at the Drum Mine site, specifically including the posting of a reclamation bond sufficient to bond all reclamation at the mine.

After closing, things did not go well for Mr. King and his companies. He at first acknowledged that he was to do all the reclamation work; later his stance changed radically and he wrote a letter telling Mr. Cerny of Western that Defendants were only going to do reclamation work on the areas that they mined, taking

the stance for the first time that he had no^d duties to reclaim previously disturbed areas of the mine. He also communicated this to people at the Division of Oil, Gas and Mining (DOGM) in Utah. He then furnished them maps which, for the first time, contradicted previous maps he had furnished to the Utah authorities. The new maps showed areas where Defendants asserted Western had to do reclamation. In the letter he wrote to Mr. Cerny, Mr. King enclosed a partial copy of the contract and pointed out the provision that "Assignor shall be responsible" for reclamation at the mine. This conduct by Defendants was a clear, unequivocal repudiation of the contract requirement that they assume all reclamation responsibilities at the Drum Mine, and it was a breach of that contract.

The Defendants apparently assert that Western breached the contract at closing by a failure to deliver the mining permit. This contention is not supported by the evidence. The evidence establishes that there had to be a transfer of the mining permit through the Utah authorities from Western to Defendants, and that no one contemplated that the permit could be completed and delivered at the time of closing. A permit transfer could not be completed until the new operator, ASOMA and Jumbo, posted a new bond. This evidence establishes that the operating permit could not be delivered at closing and was not expected to be delivered at closing by the parties. Western cooperated in delivering documents and maps and other materials to effect a complete change of

ownership, and both Mr. King and the experts testified that the permit could not be transferred at the time of closing. I therefore find there was no breach of contract by Western in that regard. The evidence does show that at a time subsequent to Defendants' breach of contract and Defendants' repudiation of their reclamation responsibilities, Western did report to DOGM that Defendants were conducting tests on some of the unpermitted heaps and that Western objected to Defendants' actions. This caused Defendants' testing by sprinkling on those heaps to be shut down. Given the prior anticipatory repudiation of the contract by Defendants, this conduct by Western is neither an actionable breach of contract or a breach of contract.

Western has presented evidence in support of its claim for damages for breach of contract. That evidence was presented through the testimony of John Carmody, Western's Vice President in charge of administration and accounting, and through Exhibit 97A through E. Mr. Carmody testified to approximately \$142,000 in damages consisting of: fees paid by Western to attorneys representing Western in administrative matters before the Utah mining authorities; miscellaneous expenses described as related to those matters and efforts to resolve the dispute over reclamation with Utah authorities; and labor costs to Western States. With the exception of damages claimed for Western's payments of reclamation bond premiums from the date of closing in October 1988 to the present, the Court disallowed the evidence of these damages on

Defendants' motion at the conclusion of the trial. The Court concluded that although evidence of payment of the bills to attorneys may be some evidence of reasonableness, the Court was not persuaded that it is reasonable to allow those items as damages when the Western timeslips included charges in 8 hour increments and attorney fees included multiple attorneys billing for the same work. As to the remainder of the damages claimed, the Court finds no evidence establishing that those costs and amounts were incurred as a consequence of Defendants' breach or that they were reasonable. Plaintiff failed to establish reasonableness of the attorney fees or the time and fees of Western personnel. As to the remaining area of damages, the bond premiums paid by Western to its insurer for the reclamation bond in Utah, there was not enough definite evidence to establish that the bond premiums can be categorized as damages for the breach of contract that was proven.

The Court makes no findings on the alleged "groundwater problem" or other "buried bodies" to which Mr. King has testified. There is little evidence in the record on the alleged groundwater problem. It was first discovered in 1989. There is no evidence that the parties knew anything about it prior to the time of closing. I do not find the remedying of the groundwater problem to be included within the contracting parties' understanding of the term reclamation. This Order and Judgment therefore does not address it.

CONCLUSIONS OF LAW

There are unique circumstances in this case which justify the order of specific performance by Defendants.

A court has discretion to order specific performance under a contract where the contract shows that a party is clearly entitled to the relief it seeks, and where a remedy at law is inadequate. Hill v. Chambers, 136 Colo. 129, 314 P.2d 707 (1957). Western has shown its entitlement to this relief, and Defendants shall be required to perform all contract obligations to assume all reclamation at the Drum Mine site, specifically including undertaking the bonding requirements imposed by the appropriate public authorities in the state of Utah.

A party to a contract who repudiates the contract before the time when his performance is to be completed commits a breach of the contract. Repudiation will give rise to a claim for breach of contract when the repudiating party shows, by words or conduct, or both, a clear and definite intention not to perform the contract. 4 A. Corbin, Contracts, § 959 (1951); Restatement 2d, Contracts, § 250 (1981). Defendants clearly repudiated and breached their contract with Western when they stated to Western and to the Utah authorities that they did not intend to be responsible for all reclamation at the mine, notwithstanding their contractual obligation to accept all reclamation obligations.

The party committing the first substantial breach of contract has no right to complain of subsequent breaches by the other party

thereto. Scientific Packages, Inc. v. Gwinn, 134 Colo. 233, 301 P.2d 719 (1956). Defendants committed the first and only breach in this case by telling Western and Utah DOGM that Defendants would not assume all reclamation obligations, by urging only a partial permit transfer, and by refusing to take those actions necessary to allow a transfer of the complete operating permit for the Drum Mine. This obligation included accepting and bonding for all reclamation including the unpermitted heaps and the topsoil deficiency.

Every contract contains an implied duty of good faith and fair dealing. Restatement 2d, Contracts, § 205 (1981). A claim for breach of this covenant is a claim for money damages, and because no money damages are being awarded for Defendants' breach, there can be no recovery for the breach of the covenant of good faith and fair dealing.

An agent acting on behalf of a disclosed principal cannot be held personally liable for breaches of contract. Fink v. Montgomery Elevator Company, 161 Colo. 342, 421 P.2d 735 (1966). The evidence was insufficient to establish that Ed King was a party to the contract, and this being a necessary element of Western's claims against him for breach of contract, Western's claims against Mr. King cannot be established.

ORDERS

IT IS ORDERED AND ADJUDGED that as to Western's first claim for injunctive relief, that claim is moot and has been withdrawn by

Western. The Court has found for Western and against the Defendants on the second claim for relief for reformation. and judgment entered on this claim on February 23, 1993, nunc pro tunc to January 27, 1993. As to Western's third claim for relief, breach of contract - damages, the Court finds for Defendants and against Western for failure to establish money damages as discussed above. On Western's fourth claim for relief, breach of contract - specific performance - this Court finds for Western and against Defendants and specifically Orders that Defendants, ASOMA and Jumbo, are to forthwith perform all contract obligations to assume all reclamation at the Drum Mine; this obligation includes undertaking forthwith whatever bonding requirements are required by the appropriate authorities in the State of Utah to effectuate the clear purpose of this contract, which is that Defendants assume all reclamation responsibilities. As to Western's fifth claim for relief for the breach of the covenant of good faith and fair dealing, the Court finds for Defendants and against Western for the same reasons related to the failure to establish money damages in connection with the third claim for relief.

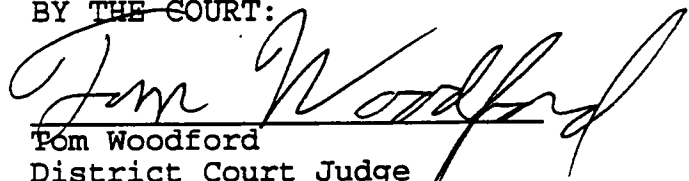
On Defendants' counterclaims for breach of contract, the Court finds for Western and against Defendants, there having been an anticipatory repudiation and breach of the contract by Defendants in April 1989. Judgment enters against the Defendants Jumbo and ASOMA.

All claims against Ed King in his individual capacity are dismissed.

Western shall perform all of its contractual obligations, including its obligations to transfer to ASOMA all permits necessary to operate the Drum Mine and to execute and deliver to ASOMA and Jumbo all documents that might reasonably be required to do so.

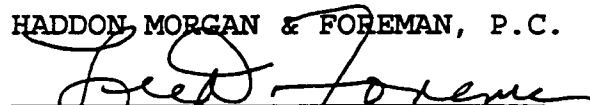
DONE AND SIGNED this 16th day of May, 1994.

BY THE COURT:


Tom Woodford
District Court Judge


APPROVED AS TO FORM:

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Western States Minerals
Corporation

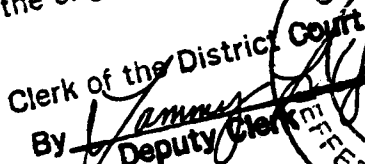
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Jumbo Mining Company and
Edwin B. King

DISTRICT COURT
County of Jefferson, Colorado
Certified to be full, true and correct copy
of the original in my custody

Clerk of the District Court
By  Deputy Clerk

